

REMARKS

I. Status of the Application

Claims 15, 21, 22, 26 and 27 are pending in this application. In the November 12, 2008 Office action, the Examiner rejected claims 15, 21, 22, 26 and 27 under 35 U.S.C. § 103 as allegedly being anticipated by U.S. Patent Application no. 2002/0152306 A1 to Tuck, III et al. (hereinafter "Tuck") in view of U.S. Patent Application no. 2003/0012197 A1 to Yazaki (hereinafter "Yazaki").

In this response, applicant respectfully traverses the Examiner's rejection of claims 15, 21, 22, 26 and 27.

II. The Rejection of Independent Claims 15 and 22 Under 35 U.S.C. 103 Should Be Withdrawn

In the November 12, 2008 office action, the examiner rejected claims 15 and 22 under 35 U.S.C. § 103 as being unpatentable over Tuck in view of Yazaki. Applicant notes that pursuant to MPEP 2143, "the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." Furthermore, in order to establish a *prima facie* case of obviousness all claim limitations must be considered. MPEP § 2143.03.

In the present case, it is respectfully submitted that neither Tuck nor Yazaki teach or suggest all the limitations of claims 15 and 22. For example, claims 15 and 22 both include the limitations of "subtract[ing] the size of the packet from a value of the bandwidth counter corresponding to the detected set of one more packet flows to obtain an adjusted value" and "replenish[ing] each bandwidth counter with a predetermined value at a regular interval". Another example of a limitation not disclosed in Tuck or

Yazaki is that of “issuing a policing instruction if the adjusted value is equal to or lower than a first predetermined level”.

A. *Tuck*

As admitted by the examiner at page 7 of the November 12, 2008 Office action, Tuck does not disclose the limitations of claims 15 and 22 of “subtract[ing] the size of the packet from a value of the bandwidth counter corresponding to the detected set of one more packet flows to obtain an adjusted value” and “replenish[ing] each bandwidth counter with a predetermined value at a regular interval”.

B. *Yazaki*

Yazaki relates to a bandwidth monitoring method and device. At page 8 of the November 12, 2008 Office action, the examiner argues that Yazaki teaches the limitations of “subtract[ing] the size of the packet from a value of the bandwidth counter corresponding to the detected set of one more packet flows to obtain an adjusted value” and “replenish[ing] each bandwidth counter with a predetermined value at a regular interval”. The examiner cites paragraphs 0070, 0071, 0076, 0080 and 0081 and Fig. 5 of Yazaki as disclosing these limitations.

A close review of paragraphs 0070 and 0071 of Yazaki, clearly reveals that Yazaki relates to the same method disclosed in Tuck. In particular, Yazaki relates to *counter subtraction* and *packet length addition* (instead of *counter replenishment* and *packet length subtraction* as set forth in the claims). The foregoing distinction between Yazaki and the present application can be clearly seen in paragraphs 0071 and 0072 and is also reinforced from paragraph 0082 of Yazaki which clearly discloses that when a packet arrives, its length is added to the bucket (see lines 3-6 of paragraph 0082). By teaching that the length of the packet should be *added* to the bucket, Yazaki actually

teaches away from the limitations of claims 15 and 22 that call for “subtract[ing] the size of the packet from a value of the bandwidth counter”.

Applicant notes that paragraph 0081 of Yazaki mentions “*subtracting* the leaked water quantity from the bucket accumulation water quantity CNT 434”. This subtraction relates to the counter determined leaking, i.e., counter based subtraction from the bucket for regulating the bandwidth according to the *qos*. Paragraphs 0070-0071 of Yazaki explains this very clearly. Additionally, the bucket in Yazaki simply cannot be “replenished” by adding the value of the packet. In the disclosure of Yazaki, a *full* bucket means no more bandwidth. By contrast, according to the disclosure of the present application an *empty* bucket means no more bandwidth. Thus, Yazaki’s disclosure of “subtracting the leaked water” teaches away from the limitation of “replenish[ing] each bandwidth counter with a predetermined value at a regular interval”.

With the understanding that Yazaki teaches counter subtraction and packet length addition, it becomes clear that another limitation of claims 15 and 22 can not possibly be disclosed by Tuck and Yazaki. Specifically, the limitation of “issue a policing instruction if the adjusted value is equal to or *lower* than a first predetermined level” can not possibly be taught by Tuck or Yazaki. In particular, Tuck and Yazaki teach away from this limitation by issuing a policing instruction when the bucket is *above* a predetermined level (see paragraph 0071 of Yazaki).

In view of the foregoing, it is respectfully submitted that the limitations of “*subtract[ing] the size of the packet from a value of the bandwidth counter corresponding to the detected set of one more packet flows to obtain an adjusted value*”, “*issue a policing instruction if the adjusted value is equal to or lower than a first predetermined level*”, and “*replenish[ing] each bandwidth counter with a predetermined*

value at a regular interval” as set forth in claims 15 and 22 are not disclosed in the portions of Yazaki cited by the examiner.

C. *Tuck in View of Yazaki*

In view of the foregoing, it is respectfully submitted that neither Tuck nor Yazaki teach the limitations of claims 15 and 22 of “subtract the size of the packet from a value of the bandwidth counter corresponding to the detected set of one more packet flows to obtain an adjusted value”, “issue a policing instruction if the adjusted value is equal to or lower than a first predetermined level” and “replenish each bandwidth counter with a predetermined value at a regular interval”. Accordingly, because neither Tuck nor Yazaki teach all the limitations of claims 15 and 22, it is respectfully submitted that the examiner’s rejection of claims 15 and 22 under 35 U.S.C. § 103 should be withdrawn.

III. The Rejection of Dependent Claims 20, 21, 26 and 27 Should Be Withdrawn

Dependent claims 21, 26 and 27 all depend from and incorporate all the limitations of one of allowable independent claims 15 or 22. Accordingly, it is respectfully submitted that dependent claims 21, 26 and 27 are also allowable for at least the same reasons the independent claims 15 and 22 are allowable.

IV. Telephone Conference of January 8, 2009

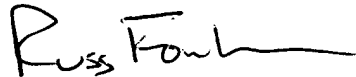
The foregoing matters were discussed during a telephone conference with the examiner on January 8, 2009. The examiner requested applicant to formally submit this response as he considers the arguments made during the telephone conference.

IV. Conclusion

For all of the foregoing reasons, it is respectfully submitted that applicant has made a patentable contribution to the art. Favorable reconsideration and allowance of this application, including claims 15, 21, 22, 26 and 27, is therefore respectfully requested.

In the event applicant has inadvertently overlooked the need for an extension of time or payment of an additional fee, the applicant conditionally petitions therefore, and authorizes any fee deficiency to be charged to deposit account 13-0014.

Respectfully submitted,



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